



August 31, 2000

Ms. Elaine Hengen
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2000-3380

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138579.

The City of El Paso (the "city") received a request for information pertaining to a missing person case. Specifically, the requestor seeks: 1) the missing person report regarding the individual's disappearance; 2) any other documentation regarding the disappearance; 3) any other police reports regarding the missing individual; and 4) any police reports regarding two other specified individuals. You state that the city has already released the basic information,¹ however, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin our analysis with the two complaint reports, submitted as Exhibits B and C, which you claim are excepted under section 552.108. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a), (b), .301(e); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that these reports pertain to the 1993 disappearance of an individual. Although the disappearance occurred seven years ago, recent events have transformed the missing person investigation

¹"Basic information" refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See also Open Records Decision No. 127 (1976).

into a homicide investigation which is now pending. Based on this representation, we find that release of the submitted reports would interfere with an ongoing criminal case, and therefore, the submitted reports are subject to section 552.108(a)(1). Therefore, the city may withhold most of Exhibits B and C with the exception of the front page information which you state the city has released. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Although section 552.108(a)(1) authorizes the city to withhold the non-front page information from disclosure, you may choose to release all or part of Exhibits B and C that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Now we turn to the remainder of the submitted information, Exhibits E through G.² You claim that this information is confidential under section 552.101 in conjunction with common law privacy. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

In this instance, the requestor asks for all criminal records regarding the individual who disappeared as well as two other named individuals. You explain that it has not yet been determined with absolute certainty whether the individual who disappeared is deceased. Accordingly, we believe that the request implicates the privacy rights of that individual and that of the two other named individuals. Thus, to the extent that the city has records responsive to the request in which any of the three named individuals is a possible suspect, the city must withhold this information under section 552.101.³ *See id.*

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and

²Exhibit D contains the city's elaborations on arguments raised in its letter of June 29, 2000.

³The information you have submitted to this office does not make it clear whether the city has criminal records in which the three named individuals is a possible suspect. Only criminal records in which any of the named individuals are suspects are confidential under section 552.101.

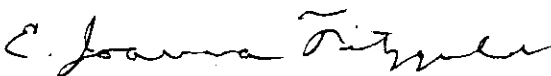
the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 138579

Encl: Submitted documents

cc: Mr. Patrick C. McDonnell
El Paso Times
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(w/o enclosures)